

BOWMAN AND BROOKE LLP  
Robert S. Robinson, SBN: 131461  
970 West 190th Street, Suite 700  
Torrance, California 90502  
Tel: (310) 768-3068  
Fax: (310) 719-1019  
rob.robinson@bowmanandbrooke.com

*Attorneys for Defendant*  
PERKINS MOTOR TRANSPORT, INC.,  
d/b/a PERKINS SPECIALIZED TRANSPORTATION

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ALPHA ONE TRANSPORTATOR,  
INC., a California corporation, and  
AMERICAN HEAVY MOVING AND  
RIGGING, INC., a California  
corporation,

Plaintiffs,

v.

PERKINS MOTOR TRANSPORT,  
INC., d/b/a PERKINS SPECIALIZED  
TRANSPORTATION, a Minnesota  
corporation,

Defendant.

**CASE NO: 13-cv-2662 JAH NLS**

**DEFENDANT'S ANSWER TO  
COMPLAINT AND  
COUNTERCLAIMS**

**DEMAND FOR JURY TRIAL**

**Answer**

Defendant Perkins Motor Transport, Inc., d/b/a Perkins Specialized Transportation ("Perkins") answers Plaintiffs' Complaint as follows:

1. Perkins denies each and every allegation, matter and thing contained in the Complaint, except as hereinafter admitted, qualified, alleged or otherwise stated.

**The Parties**

2. Perkins is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Complaint.



1 when he had them as contained in the remainder of paragraph 9 of the Complaint,  
2 and on that basis, denies those allegations.

3 11. Perkins lacks sufficient information as to what Plaintiffs mean by  
4 “designed and built” in the first sentence of paragraph 10 of the Complaint, and on  
5 that basis, denies those allegations. Perkins lacks sufficient knowledge or  
6 information to form a belief as to the truth or falsity of the allegations contained in  
7 the rest of Paragraph 10 of the Complaint, and on that basis, denies those allegations.

8 12. In response to the allegations contained in Paragraph 11 of the  
9 Complaint, Perkins acknowledges that Exhibit A was attached to the Complaint and  
10 that Exhibit A purports to be a copy of the '897 patent, which was issued by the  
11 United States Patent and Trademark Office (“USPTO”) on April 23, 2013. Perkins is  
12 without knowledge or information sufficient to form a belief as to the truth or falsity  
13 of the remaining allegations contained in Paragraph 11, and on that basis, denies  
14 those allegations.

15 13. Perkins denies the allegations contained in Paragraph 12 of the  
16 Complaint.

17 14. In response to the allegations contained in Paragraph 13 of the  
18 Complaint, Perkins admits that it used the “Road Train” trailer within this District,  
19 but affirmatively states that its use of the “Road Train” trailer was before the '897  
20 patent had issued.

21 **First Claim of Relief**

22 15. In response to the allegations contained in Paragraph 14 of the  
23 Complaint, Perkins incorporates its responses to the preceding paragraphs as though  
24 fully set forth herein.

25 16. Perkins lacks sufficient knowledge or information to form a belief as to  
26 the truth or falsity of the allegations contained in paragraph 15 of the Complaint, and  
27 on that basis, denies those allegations.  
28

1 17. Perkins denies the allegations contained in Paragraph 16 of the  
2 Complaint.

3 18. Perkins denies the allegations contained in Paragraph 17 of the  
4 Complaint.

5 19. Perkins denies the allegations contained in Paragraph 18 of the  
6 Complaint.

7 20. Perkins denies the allegations contained in Paragraph 19 of the  
8 Complaint.

9 **Request For Relief**

10 Perkins denies that Plaintiffs are entitled to any judgment or relief, and  
11 denies all allegations contained in Plaintiffs' Request for Relief.

12 **Demand for a Jury Trial**

13 Perkins acknowledges Plaintiffs' demand for a jury trial.

14 **AFFIRMATIVE DEFENSES**

15 **First Affirmative Defense**

16 The Complaint, in whole or in part, fails to state a claim upon which relief  
17 can be granted.

18 **Second Affirmative Defense**

19 Perkins has not infringed the '897 patent.

20 **Third Affirmative Defense**

21 The '897 patent is invalid, unenforceable, and void for failure to comply  
22 with the statutory requirements of 35 U.S.C. §§ 101, 102, 103, 112, 115, and 116  
23 for one or more of the following reasons:

- 24 a. The alleged inventions claimed in the '897 patent were known or  
25 used by others in the United States prior to the invention thereof by  
26 the patent applicant;
- 27 b. The alleged inventions claimed in the '897 patent were patented or  
28 described in a printed publication in this or a foreign country before

1 the earliest invention date to which the patentee of the '897 patent is  
2 entitled;

3 c. The alleged inventions claimed in the '897 patent were in public use  
4 or on sale in the United States more than one year prior to the date of  
5 the earliest application for the patent in the United States;

6 d. The inventors abandoned the alleged inventions claimed in the '897  
7 patent prior to filing the earliest application from which the '897  
8 patent issued;

9 e. The alleged inventions claimed in the '897 patent were first patented  
10 or caused to be patented, or were the subject of an inventor's  
11 certificate, by the named inventors or their legal representatives or  
12 assigns in a foreign country prior to the date of the earliest application  
13 for patent in this country on an application for patent or inventor's  
14 certificate filed more than twelve months before the filing of the  
15 earliest application in the United States;

16 f. The alleged inventions claimed in the '897 patent were described in a  
17 patent granted on an application for patent by another filed in the  
18 United States before the invention thereof by the named inventors;

19 g. The inventors did not invent the subject matter claimed in the '897  
20 patent;

21 h. Before the applicants' invention thereof, the inventions were made in  
22 this country by another who had not abandoned, suppressed, or  
23 concealed them;

24 i. The differences between the subject matter sought to be patented in  
25 the '897 patent and the prior art would have been obvious at the time  
26 the invention was made to a person having ordinary skill in the art to  
27 which such subject matter pertains;  
28

1 j. The specification of the '897 patent does not contain a written  
2 description of the alleged inventions and of the manner or process of  
3 making and using them, in such full, clear, concise, and exact terms  
4 as to enable any person skilled in the art to which such subject matter  
5 pertains, or with which it is most nearly connected, to make and use  
6 the same; and/or

7 k. The specification of the '897 patent does not conclude with one or  
8 more claims particularly pointing out and distinctly claiming the  
9 subject matter which the applicants regarded as their invention.

10 **Fourth Affirmative Defense**

11 The '897 patent is limited in scope and is invalid and void because  
12 additional prior art exists that anticipates or renders obvious the subject matter of  
13 the '897 patent.

14 **Fifth Affirmative Defense**

15 The claims of the '897 patent, if given an interpretation sufficiently broad as  
16 to cover any device manufactured, used, offered for sale, sold, or imported by  
17 Perkins, or any method practiced by Perkins, are invalid.

18 **Sixth Affirmative Defense**

19 Plaintiffs is estopped to assert infringement of the claims of the '897 patent  
20 by virtue of admissions, amendments, and arguments made to the USPTO during  
21 the prosecution of the application from which the '897 patent matured, which  
22 admissions, amendments, and arguments were made for the purpose of attempting  
23 to distinguish over prior art relied upon by the United States Patent Examiner  
24 when rejecting claims so as to thereby secure allowance of such claims.

25 **Seventh Affirmative Defense**

26 Plaintiffs' claims are barred by the equitable defense of unclean hands.

27 **Eighth Affirmative Defense**

28 Plaintiffs' claims are barred by the equitable defense of acquiescence.

**Ninth Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of laches because Plaintiffs unreasonably delayed in bringing this action to the prejudice of Perkins.

**PRAYER FOR RELIEF**

WHEREFORE, Perkins respectfully requests that this Court:

- a. Deny the relief sought by Plaintiffs and dismiss Plaintiffs' Complaint with prejudice;
- b. Award Perkins costs and fees incurred in defending this action; and
- c. Grant Perkins such other relief as the Court may deem just and proper.

**COUNTERCLAIMS**

Defendant and Counterclaimant, Perkins Motor Transport, Inc., d/b/a Perkins Specialized Transportation ("Perkins"), for its counterclaims against Plaintiffs Alpha One Transportator, Inc., and American Heavy Moving and Rigging, Inc. ("Plaintiffs"), alleges as follows:

1. These counterclaims arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Subject matter jurisdiction is conferred in this Court under 28 U.S.C. § 1338(a). There is a justifiable controversy concerning the validity, enforceability and infringement of the '897 patent, as set forth in the Complaint and in the Answer to which these Counterclaims are appended.

2. Perkins is a Minnesota corporation with its principal place of business at 1800 Riverview Drive, Northfield, Minnesota.

3. Upon information and belief, Plaintiffs are California corporations.

4. Upon information and belief, Plaintiff Alpha One Transportator, Inc., is the assignee of the '897 patent.

**Counterclaim I**

**(For Declaration of Invalidity of the '897 patent)**



5. The allegations of Paragraphs 1 through 4 are incorporated herein by reference as if fully restated here.

6. The '897 patent is invalid, unenforceable and void for failure to comply with the statutory requirements of 35 U.S.C. §§ 101, 102, 103, 112, 115, and 116 for one or more of the reasons set forth in the Affirmative Defenses of the Answer to which these Counterclaims are appended.

## Counterclaim II

(Declaration of Non-Infringement of the '897 patent)

7. The allegations of Paragraphs 1 through 6 are incorporated herein by reference as if fully restated here.

8. Perkins has not infringed, and is not now directly or indirectly infringing any valid claim of the '897 patent.

9. Plaintiffs are estopped to assert that any claim of the '897 patent is entitled to an interpretation of sufficient scope to cover the manufacture, use, sale, or offering for sale or importation of any of Perkins's devices by virtue of admissions, amendments, and arguments made to the USPTO during prosecution of the application from which the '897 patent issued.

## PRAYER FOR RELIEF

WHEREFORE, Perkins prays for judgment against Plaintiffs on Perkins's counterclaims as follows:

- a. A declaratory judgment that the '897 patent is invalid, unenforceable and void in law;
- b. A declaratory judgment that Perkins has not directly or indirectly infringed the '897 patent;
- c. An order permanently enjoining and restraining Plaintiffs from further charges of infringement or acts of enforcement based on the '897 patent against Perkins, its representatives, agents and customers, both present and prospective;



- 1 d. An order finding that Plaintiffs' allegations were not supported by  
2 fact, as required by Federal Rule of Civil Procedure 11, and awarding  
3 appropriate sanctions against Plaintiffs and in favor of Perkins;  
4 e. An order finding this to be an exceptional case under 35 U.S.C. § 285  
5 and awarding Perkins its attorneys' fees incurred in connection with  
6 this litigation; and  
7 f. Such other and further relief as this Court may deem just and  
8 equitable.

9 **DEMAND FOR A JURY TRIAL**

10 Perkins hereby demands a trial by jury of all issues so triable.

11  
12 Dated: December 23, 2013

BOWMAN AND BROOKE LLP

13  
14 By s/Robert S. Robinson  
15 Robert S. Robinson  
16 Attorneys for Defendant Perkins Motor  
17 Transport, Inc., d/b/a Perkins Specialized  
18 Transportation  
19 rob.robinson@bowmanandbrooke.com  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 23, 2013 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ. L.R. 5.4(d). Any other counsel of record will be served by electronic mail, facsimile, and/or overnight delivery.

BOWMAN AND BROOKE LLP

By s/Robert S. Robinson  
Robert S. Robinson  
Attorneys for Defendant Perkins  
Motor Transport, Inc., d/b/a Perkins  
Specialized Transportation  
Contracting  
rob.robinson@bowmanandbrooke.com